

Message

From: Eric Allmon [eallmon@txenvirolaw.com]
Sent: 2/5/2021 8:43:49 PM
To: Ryland, Renea [Ryland.Renea@epa.gov]
CC: Rick Lowerre [rl@lf-lawfirm.com]; David Frederick [dof@lf-lawfirm.com]; Marisa Perales [marisa@txenvirolaw.com]; Lauren Ice [lauren@txenvirolaw.com]
Subject: Texas Water Quality Issues
Attachments: City of CC IH Application Notice.pdf; City of CC La Quinta Application Notice.pdf; POCCA HI Draft Permit Notice.pdf; DS v TCEQ Anti Deg Trial Court Order.pdf; POCCA La Quinta Application Notice.pdf; POCCA IH PFD.pdf

Renea,

I hope this finds you well. I wanted to drop a note to update you on a few recent developments here in Texas related to water quality permitting, call the EPA's attention to a few water quality permit applications at the TCEQ that raise particular concern, and see if there is a time in the near future when EPA's Region 6 Water staff would be available to meet to discuss these issues, particularly staff responsible for TCEQ permitting oversight.

I've previously discussed with Region 6 the issue of TCEQ's problematic approach to the Tier 2 anti-degradation review, by which TCEQ always avoids such a review by finding in every case that the discharge will have a less than "de minimis" impact on water quality. TCEQ's approach to that issue within the context of nutrient discharges into a clear hill country stream was recently addressed in a judicial appeal of a TCEQ permitting decision to issue a new permit to the City of Dripping Springs. The District Court decision in that matter is attached to this email as DS v TCEQ Anti Deg Trial Court Order. In that decision, the trial court found that TCEQ had erred in finding that the discharge would have no more than a *de minimis* impact. The Court in that matter found that "TCEQ's and EPA's anti-degradation rule sets out substantive standards: following TCEQ's checklist of procedures for anti-degradation review does not assure compliance with these substantive standards." That is a finding that I find to be true. I wanted to call EPA's attention to this judicial finding of a systematic error in TCEQ's implementation of the Tier 2 anti-degradation standards, and ask that EPA itself carefully examine the manner in which Texas' permitting procedures do not implement the required anti-degradation reviews. That matter is now pending on appeal, which I understand to have been transferred to the El Paso Court of Appeals.

There are four permit applications I wanted to highlight that are now before the TCEQ where a proper Tier 2 review would be important, but the Executive Director has not performed such a review. All these permits are related to discharges from desalination facilities in or near Corpus Christi Bay. For three of these applications, no draft permit has been issued yet, and so I would understand that they would still be subject to the EPA's comment period. The other application has undergone a hearing at the Texas State Office of Administrative Hearings, with the administrative law judge recommending denial of the permit based, in part, upon a finding that the Executive Director erroneously found that the discharge would have a less than de minimis impact on water quality.

The permit applications at issue for which no draft permit has been issued include:

- (1) the application by the City of Corpus Christi for a 69 mgd discharge of desalination wastewater near La Quinta Island in Corpus Christi Bay (Permit TPDES WQ0005290000; EPA I.D. No. TX0139891);
- (2) the application by the Port of Corpus Christi Authority for a 57.3 mgd discharge of desalination wastewater near La Quinta Island in Corpus Christi Bay (Permit TPDES WQ0005254000; EPA I.D. No. TX0138355); and

(3) the application by the City of Corpus Christi for a 51 mgd discharge of desalination wastewater directly to Corpus Christi Inner Harbor (Permit TPDESWQ0005289000; EPA I.D. TX0139874).

These are each currently under technical review, and we would expect that a draft permit for each will be issued soon and then subject to review and comment by EPA and citizens. We appreciate the opportunity to discuss these with EPA staff soon.

The other permit involves the application of the Port of Corpus Christi Authority for TPDES Permit No. WQ0005253000 (EPA I.D. No. TX0138347) authorizing a discharge of 95.6 MGD of desalination wastewater from a Harbor Island facility proposed to be constructed in Corpus Christi Bay. A draft permit for that application had been issued in October of 2018, after which a contested case hearing was held and recently concluded. I'm attaching to this e-mail a copy of the administrative judge's decision in that case, which lays out well many of the problems with that application, which likely would be in common with the three draft permits identified above that will soon be subject to EPA comment. As a general matter, I would encourage EPA to consider the problems that the judges found with this permit as it reviews and comments upon the permits identified above that will be coming up for EPA review at some point. Again, the flawed TCEQ Tier 2 review procedures is an over-arching programmatic problem reflected in this proposal for decision. I realize that EPA's normal review period for this application has passed, and that TCEQ has previously rejected efforts by the EPA to provide input at this stage of the permitting process. But, as protesting parties our clients still have opportunities to submit filings on the judges' recommendation, and it would be helpful to have a discussion with the EPA as we go through that process.

I'll note that a full Tier 2 review would be particularly important for these matters both because even for significant industrial development Corpus Christi simply does not need the numerous desalination facilities being proposed, and the impacts of concern could be avoided through the location of the a facility such that the discharge and intake are further out into the Gulf of Mexico.

I would also highlight that each of these facilities involves tremendous raw water intakes that accompany the large reject water discharges. Unlike the situation with power plant cooling water discharges, the impact of those intakes is not considered in the water quality permitting process (or, at least Texas is not considering them in that context). We would appreciate some opportunity to discuss whether a wholistic approach to the environmental impact of these facilities can be developed that jointly considers both the intakes and the discharges.

Please let me know if there are times in the next week or so when relevant regional staff would be available for a (virtual) meeting to discuss these issues.

Thanks,

Eric Allmon
Attorney
Perales, Allmon & Ice, P.C.
1206 San Antonio St.
Austin, Texas 78701
(512) 469-6000 (p)
(512) 482-9346 (f)